

House File 2269

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1 3 AN ACT
1 4 PROVIDING FOR THE REGULATION OF BUSINESS ENTITIES, INCLUDING
1 5 BUSINESSES PROVIDING FOR CEMETERY AND FUNERAL MERCHANDISING
1 6 AND SERVICES, BUSINESS PROMOTIONS AND CONTRACTS, AND
1 7 BUSINESSES PROVIDING CONTINUING CARE OR ADULT CONGREGATE
1 8 LIVING SERVICES, AND PROVIDING PENALTIES.
1 9
1 10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
1 11
1 12 DIVISION I
1 13 CEMETERY AND FUNERAL MERCHANDISING AND SERVICES
1 14 Section 1. Section 523A.102, subsection 22, Code 2003, is
1 15 amended by striking the subsection.
1 16 Sec. 2. Section 523A.501, subsection 6, Code 2003, is
1 17 amended to read as follows:
1 18 6. If no denial order is in effect and no proceeding is
1 19 pending under section 523A.503, the application becomes
1 20 effective at noon of the thirtieth day after a completed
1 21 application or an amendment completing the application is
1 22 filed, unless waived by the applicant. The commissioner may
1 23 specify an earlier effective date. Automatic effectiveness
1 24 under this subsection shall not be deemed approval of the
1 25 application. If the commissioner does not grant the permit,
1 26 the commissioner shall notify the person in writing of the
1 27 reasons for the denial. ~~The permit shall disclose on its face~~
~~1 28 the permit holder's employer or the establishment on whose~~
~~1 29 behalf the applicant will be making or attempting to make~~
~~1 30 sales, the permit number, and the expiration date.~~
1 31 Sec. 3. Section 523A.502, subsection 7, Code 2003, is
1 32 amended to read as follows:
1 33 7. A sales permit is not assignable or transferable. ~~A~~
~~1 34 permit holder~~ An establishment selling all or part of ~~a its~~
1 35 business to a purchaser shall cancel the establishment's sales
2 1 permit and the. The purchaser shall apply for a new sales
2 2 permit in the purchaser's name within thirty days of the sale.
2 3 DIVISION II
2 4 BUSINESS PROMOTIONS AND CONTRACTS
2 5 Sec. 4. Section 22.7, subsection 42, Code Supplement 2003,
2 6 is amended to read as follows:
2 7 42. Information obtained by the commissioner of insurance
2 8 in the course of an investigation as provided in section
2 9 502.603, ~~523B.8,~~ or 523C.23.
2 10 Sec. 5. Section 523B.1, subsection 1, Code 2003, is
2 11 amended by striking the subsection.
2 12 Sec. 6. Section 523B.1, subsection 3, paragraph a,
2 13 unnumbered paragraph 1, Code 2003, is amended to read as
2 14 follows:
2 15 "Business opportunity" means an opportunity to start a
~~2 16 business according to the terms of a contract or agreement,~~
2 17 between a seller and purchaser, express or implied, orally or
~~2 18 in writing, at in which the purchaser provides an initial~~
2 19 investment exceeding five hundred dollars, where, the parties
~~2 20 agree seller represents~~ that the seller or a person
2 21 recommended by the seller is to provide to the purchaser any
2 22 products, equipment, supplies, materials, or services for the
2 23 purpose of enabling the purchaser to start ~~a the business,~~
2 24 and the seller represents, directly or indirectly, orally or
2 25 in writing, any of the following:
2 26 Sec. 7. Section 523B.1, subsection 3, paragraph b,
2 27 subparagraph (5), Code 2003, is amended to read as follows:
2 28 (5) The renewal or extension of a business opportunity
2 29 ~~contract or agreement~~ entered into under this chapter or prior
2 30 to July 1, 1981.
2 31 Sec. 8. Section 523B.1, Code 2003, is amended by adding
2 32 the following new subsection:
2 33 NEW SUBSECTION. 3A. "Contract" means any agreement
2 34 between parties which is express or implied, and which is made
2 35 orally or in writing.
3 1 Sec. 9. Section 523B.1, subsection 4, unnumbered paragraph
3 2 1, Code 2003, is amended to read as follows:
3 3 "Franchise" means a contract ~~or agreement~~ between a seller
3 4 and a purchaser, ~~express or implied, orally or in writing,~~
3 5 where the parties agree to ~~both~~ all of the following:

3 6 Sec. 10. Section 523B.1, subsections 9, 10, and 12, Code
3 7 2003, are amended to read as follows:
3 8 9. "Person" means ~~an individual, corporation, trust,~~
3 9 ~~partnership, incorporated or unincorporated association, or~~
3 10 ~~any other legal entity, provided, however, person the same as~~
3 11 ~~defined in section 4.1, except that it~~ does not include a
3 12 government or governmental subdivision or agency.
3 13 10. "Purchaser" means a person who enters into a contract
3 14 ~~or agreement~~ for the acquisition of a business opportunity or
3 15 a person to whom an offer to sell a business opportunity is
3 16 directed.
3 17 12. "Sale" or "sell" includes every contract ~~or agreement~~
3 18 ~~of for~~ sale, contract to sell, or disposition of, a business
3 19 opportunity or interest in a business opportunity for value.
3 20 Sec. 11. Section 523B.2, subsections 1 through 7, Code
3 21 2003, are amended by striking the subsections.
3 22 Sec. 12. Section 523B.2, subsection 8, paragraphs a and b,
3 23 Code 2003, are amended to read as follows:
3 24 1. DISCLOSURE DOCUMENT REQUIRED. A person required to
3 25 file an irrevocable consent to service of process with the
3 26 secretary of state as a seller as provided in section 523B.2A
3 27 shall not act as seller in the state
3 28 a. ~~It is unlawful to offer or sell a business opportunity~~
3 29 ~~required to be registered pursuant to this chapter unless the~~
3 30 ~~person provides a written disclosure document as filed under~~
3 31 ~~subsection 2 is delivered to each purchaser. The person shall~~
3 32 ~~deliver the written disclosure document to the purchaser at~~
3 33 ~~least ten business days prior to the earlier of the~~
3 34 ~~purchaser's execution by a purchaser of a contract or~~
3 35 ~~agreement imposing a binding legal obligation on the purchaser~~
4 1 or the payment by a purchaser of any consideration in
4 2 connection with the offer or sale of the business opportunity.
4 3 b. 2. DISCLOSURE DOCUMENT COVER SHEET. The disclosure
4 4 document shall have a cover sheet which is entitled, shall
4 5 consist of a title printed in bold and a statement. The title
4 6 and statement shall be in at least ten point bold type,
4 7 "DISCLOSURE REQUIRED BY IOWA LAW," and shall appear as
4 8 follows:
4 9 DISCLOSURE REQUIRED BY IOWA LAW
4 10 ~~Under the title shall appear the following statement in at~~
4 11 ~~least ten point type: "The The registration of this business~~
4 12 ~~opportunity does not constitute approval, recommendation, or~~
4 13 ~~endorsement by the state of Iowa. The information contained~~
4 14 ~~in this disclosure document has not been verified by this~~
4 15 ~~state. If you have any questions or concerns about this~~
4 16 ~~investment, seek professional advice before you sign a~~
4 17 ~~contract or make any payment. You are to be provided ten (10)~~
4 18 ~~business days to review this document before signing a~~
4 19 ~~contract or agreement or making any payment to the seller or~~
4 20 ~~the seller's representative." representative.~~
4 21 The seller's name and principal business address, along
4 22 with the date of the disclosure document, shall also be
4 23 provided on the cover sheet. No other information shall
4 24 appear on the cover sheet.
4 25 3. DISCLOSURE DOCUMENT CONTENTS. A disclosure document
4 26 shall be in one of the following forms:
4 27 a. A uniform franchise offering circular prepared in
4 28 accordance with the guidelines adopted by the North American
4 29 securities administrators association, inc., as amended
4 30 through the effective date of this Act.
4 31 b. A disclosure document prepared pursuant to the federal
4 32 trade commission rule relating to disclosure requirements and
4 33 prohibitions concerning franchising and business opportunity
4 34 ventures in accordance with 16 C.F.R. } 436.
4 35 c. A form that includes all of the following:
5 1 Sec. 13. Section 523B.2, subsection 8, paragraph c,
5 2 unnumbered paragraph 1, Code 2003, is amended by striking the
5 3 unnumbered paragraph.
5 4 Sec. 14. Section 523B.2, subsection 8, paragraph c,
5 5 subparagraph (13), Code 2003, is amended by striking the
5 6 subparagraph.
5 7 Sec. 15. Section 523B.2, subsection 8, paragraph c,
5 8 subparagraphs (17), (18), (19), and (20), Code 2003, are
5 9 amended to read as follows:
5 10 (17) A statement describing any contractual restrictions,
5 11 prohibitions, or limitations on the purchaser's conduct.
5 12 Attach a copy of all ~~business opportunities and other~~
5 13 ~~contracts or agreements~~ proposed for use or in use in this
5 14 state including, without limitation, all lease agreements,
5 15 option agreements, and purchase agreements.
5 16 (18) The rights and obligations of the seller and the

5 17 purchaser regarding termination of the business opportunity
5 18 contract ~~or agreement~~.

5 19 (19) A statement accurately describing the grounds upon
5 20 which the purchaser may initiate legal action to terminate the
5 21 business opportunity contract ~~or agreement~~.

5 22 (20) A copy of the most recent audited financial statement
5 23 of the seller, prepared within thirteen months of the first
5 24 offer in this state, together with a statement of any material
5 25 changes in the financial condition of the seller from that
5 26 date. ~~The administrator may allow the seller to submit a~~

~~5 27 limited review in order to satisfy the requirements of~~
~~5 28 subparagraph (13).~~

5 29 Sec. 16. Section 523B.2, subsection 8, paragraph c,
5 30 subparagraph (25), Code 2003, is amended by striking the
5 31 subparagraph.

5 32 Sec. 17. Section 523B.2, subsection 9, paragraphs a and b,
5 33 Code 2003, are amended to read as follows:

5 34 a. ~~it is unlawful to~~ A person shall not offer or sell a
5 35 business opportunity ~~required to be registered unless the a~~
6 1 business opportunity contract ~~or agreement~~ is in writing and a
6 2 copy of the contract ~~or agreement~~ is given provided to the
6 3 purchaser at the time the purchaser ~~signs~~ executes the
6 4 contract ~~or agreement~~.

~~6 5 b. The contract or agreement is subject to this chapter~~
~~6 6 and section 714.16.~~

6 7 Sec. 18. Section 523B.2, subsection 9, paragraph c,
6 8 unnumbered paragraph 1, Code 2003, is amended to read as
6 9 follows:

6 10 ~~Contracts or agreements~~ A business opportunity contract
6 11 shall set forth in at least ten point type or equivalent size,
6 12 if handwritten, all of the following:

6 13 Sec. 19. Section 523B.2, subsection 10, Code 2003, is
6 14 amended by striking the subsection.

6 15 Sec. 20. NEW SECTION. 523B.2A SERVICE OF PROCESS ==
6 16 IRREVOCABLE CONSENT.

6 17 A seller shall file an irrevocable consent with the
6 18 secretary of state. The seller shall file the irrevocable
6 19 consent prior to executing a business opportunity contract or
6 20 engaging in the sale of a business opportunity in this state.
6 21 The irrevocable consent shall appoint the secretary of state
6 22 to be the seller's attorney to receive service of any lawful
6 23 process in a noncriminal suit, action, or proceeding against
6 24 the seller or the seller's successor, executor, or
6 25 administrator which arises under this chapter after the
6 26 irrevocable consent has been filed. The irrevocable consent
6 27 shall have the same force and validity as if the seller were
6 28 served service of process personally.

6 29 Sec. 21. Section 523B.3, Code 2003, is amended to read as
6 30 follows:

6 31 523B.3 EXEMPTIONS FROM ~~REGISTRATION AND DISCLOSURE~~
6 32 REQUIREMENTS == BURDEN OF PROOF.

6 33 1. ~~EXEMPTIONS~~. The following business opportunities are
6 34 exempt from the requirements of section 523B.2:

6 35 a. The offer or sale of a business opportunity if the
7 1 purchaser is a bank, savings and loan association, trust
7 2 company, insurance company, credit union, or investment
7 3 company as defined by the federal Investment Company Act of
7 4 1940, a pension or profit-sharing trust, or other financial
7 5 institution or institutional buyer, or a broker-dealer
7 6 registered pursuant to chapter 502, whether the purchaser is
7 7 acting for itself or in a fiduciary capacity.

7 8 b. ~~The An~~ offer or sale of a business opportunity which is
7 9 ~~defined as a franchise under section 523B.1, subsection 4,~~
7 10 provided that the seller delivers to each purchaser at the
7 11 earlier of the first personal meeting between the seller and
7 12 the purchaser, or ten business days prior to the earlier of
7 13 the execution by a purchaser of a contract ~~or agreement~~
7 14 imposing a binding legal obligation on the purchaser or the
7 15 payment by a purchaser of any consideration in connection with
7 16 the offer or sale of the business opportunity, one of the
7 17 following disclosure documents:

7 18 (1) A uniform franchise-offering circular prepared in
7 19 accordance with the guidelines adopted by the North American
7 20 securities administrators association, inc., as amended
7 21 through September 21, 1983.

7 22 (2) A disclosure document prepared pursuant to the federal
7 23 trade commission rule entitled "Disclosure requirements and
7 24 prohibitions concerning franchising and business opportunity
7 25 ventures", 16 C.F.R. } 436 (1979).

7 26 For the purposes of this paragraph "b", a personal meeting
7 27 means a face-to-face meeting between the purchaser and the

7 28 seller or their representatives, which is held for the purpose
7 29 of discussing the offer or sale of a business opportunity.
7 30 ~~The administrator may by rule adopt any amendment to the~~
7 31 ~~uniform franchise-offering circular that has been adopted by~~
7 32 ~~the North American securities administrators association,~~
7 33 ~~inc., or any amendment to the disclosure document prepared~~
7 34 ~~pursuant to the federal trade commission rule entitled~~
7 35 ~~"Disclosure requirements and prohibitions concerning~~
8 1 ~~franchising and business opportunity ventures", 16 C.F.R. }~~
8 2 ~~436 (1979), that has been adopted by the federal trade~~
8 3 ~~commission.~~

8 4 c. The offer or sale of a business opportunity for which
8 5 the cash payment made by a purchaser does not exceed five
8 6 hundred dollars and the payment is made for the not-for-profit
8 7 sale of sales demonstration equipment, material, or samples,
8 8 or the payment is made for product inventory sold to the
8 9 purchaser at a bona fide wholesale price.

8 10 d. ~~The offer or sale of a business opportunity which the~~
8 11 ~~administrator exempts by order or a class of business~~
8 12 ~~opportunities which the administrator exempts by rule upon the~~
8 13 ~~finding that the exemption would not be contrary to public~~
8 14 ~~interest and that registration would not be necessary or~~
8 15 ~~appropriate for the protection of purchasers.~~

8 16 2. DENIAL OR REVOCATION OF EXEMPTIONS.

8 17 a. ~~If the public interest of the protection of purchasers~~
8 18 ~~so requires, the administrator may by order deny or revoke an~~
8 19 ~~exemption specified in this section with respect to a~~
8 20 ~~particular offering of one or more business opportunities. An~~
8 21 ~~order shall not be entered without appropriate prior notice to~~
8 22 ~~all interested parties, opportunity for hearing, and written~~
8 23 ~~findings of fact and conclusions of law.~~

8 24 b. ~~If the public interest or the protection of purchasers~~
8 25 ~~so requires, the administrator may by order summarily deny or~~
8 26 ~~revoke any of the specified exemptions pending final~~
8 27 ~~determination of any proceedings under this section. Upon~~
8 28 ~~entry of the order, the administrator shall promptly notify~~
8 29 ~~all interested parties that it has been entered and of the~~
8 30 ~~reasons for entering the order and that within fifteen days of~~
8 31 ~~the receipt of a written request the matter will be set down~~
8 32 ~~for hearing. If a hearing is not requested the order shall~~
8 33 ~~remain in effect until it is modified or vacated by the~~
8 34 ~~administrator. If a hearing is requested or ordered, the~~
8 35 ~~administrator shall not modify or vacate the order or extend~~
9 1 ~~it until final determination.~~

9 2 c. ~~An order under this section shall not operate~~
9 3 ~~retroactively.~~

9 4 d. ~~A person does not violate section 523B.2 by reason of~~
9 5 ~~an offer or sale effected after the entry of an order under~~
9 6 ~~paragraph "b" if the person sustains the burden of proof that~~
9 7 ~~the person did not know, and in the exercise of reasonable~~
9 8 ~~care could not have known, of the order.~~

9 9 3. BURDEN OF PROOF- 2. In an administrative, civil, or
9 10 criminal proceeding related to this chapter, the burden of
9 11 proving an exemption, an exception from a definition, or an
9 12 exclusion from this chapter, is upon the person claiming it.
9 13 Sec. 22. Section 523B.7, subsection 1, paragraph a, Code
9 14 2003, is amended to read as follows:

9 15 a. ~~A person who violates the requirements for disclosure~~
9 16 ~~or for the contents of a business opportunity contract~~
9 17 ~~pursuant to section 523B.2, subsection 1, 8, or 9, is liable~~
9 18 ~~to the purchaser in an action for rescission of the agreement~~
9 19 ~~contract, or for recovery of all money or other valuable~~
9 20 ~~consideration paid for the business opportunity, and for~~
9 21 ~~actual damages together with interest as determined pursuant~~
9 22 ~~to section 668.13 from the date of sale, reasonable attorney's~~
9 23 ~~fees, and court costs.~~

9 24 Sec. 23. Section 523B.7, subsection 1, paragraphs b and c,
9 25 Code 2003, are amended by striking the paragraphs.

9 26 Sec. 24. Section 523B.7, subsection 4, Code 2003, is
9 27 amended to read as follows:

9 28 4. ~~The rights and In addition to any remedies available~~
9 29 ~~pursuant to this chapter are in addition to any other rights~~
9 30 ~~or remedies that may exist at provided by law or in equity, a~~
9 31 ~~person injured by a violation of this chapter may bring a~~
9 32 ~~civil action and recover damages or obtain other appropriate~~
9 33 ~~relief including injunctive or other equitable relief. If the~~
9 34 ~~person is the prevailing party, the person shall be awarded~~
9 35 ~~court costs, reasonable attorney fees, and expert fees which~~
10 1 ~~shall be taxed as part of the costs of the action.~~

10 2 Sec. 25. Section 523B.11, Code 2003, is amended to read as
10 3 follows:

10 4 523B.11 PENALTIES.
10 5 1. a. A seller who willfully violates the requirements
10 6 for disclosure or for the contents of a business opportunity
10 7 contract pursuant to section 523B.2, subsection 1, 8, or 9, or
10 8 who provides misleading advertising as provided in section
10 9 523B.12, subsection 2, who willfully violates a rule under
10 10 this chapter, or who willfully violates an order of which the
10 11 person has notice, or who violates section 523B.12, subsection
10 12 1, knowing that the statement made was false or misleading in
10 13 any material respect, upon conviction, is guilty of a class
10 14 "D" felony. Otherwise, a person who violates a rule adopted
10 15 or order issued under this chapter is, upon conviction, guilty
10 16 of an aggravated misdemeanor. Each of the acts specified
10 17 constitutes a separate offense and a prosecution or conviction
10 18 for any one of such offenses does not bar prosecution or
10 19 conviction for any other offense.
10 20 2. A business opportunity contract is subject to section
10 21 714.16.
10 22 3. A seller who willfully uses any device or scheme to
10 23 defraud a person in connection with the an advertisement,
10 24 offer to sell or lease, sale, or lease of a business
10 25 opportunity, or who willfully violates any other provision of
10 26 this chapter, except as provided in subsections 1 and 3,
10 27 subsection 1, is, upon conviction, guilty of a fraudulent
10 28 practice as provided in chapter 714.
10 29 3. A seller who violates a rule or order adopted or issued
10 30 under this chapter is, upon conviction, guilty of an
10 31 aggravated misdemeanor.
10 32 4. The administrator may refer available evidence
10 33 concerning a possible violation of this chapter or of a rule
10 34 or order issued under this chapter to the attorney general.
10 35 The attorney general, with or without such a referral, may
11 1 institute appropriate criminal proceedings or may direct the
11 2 case to the appropriate county attorney to institute
11 3 appropriate criminal proceedings.
11 4 Sec. 26. Section 523B.12, subsections 1, 2, and 3, Code
11 5 2003, are amended to read as follows:
11 6 1. MISLEADING FILINGS STATEMENTS. It is unlawful to A
11 7 person shall not make or cause to be made, a misleading
11 8 statement in a disclosure document filed with the
11 9 administrator required pursuant to section 523B.2 or in a
11 10 proceeding under this chapter, a statement which is, at, The
11 11 statement shall be deemed to be misleading if any of the
11 12 following apply:
11 13 a. At the time and in the light of the circumstances under
11 14 which it is made, the statement is false or misleading in a
11 15 material respect or, in connection with such a statement, to
11 16 omit to state.
11 17 b. An omission of a material fact is necessary in order to
11 18 make the statement made, in the light of the circumstances
11 19 under which it is made, not misleading.
11 20 2. UNLAWFUL REPRESENTATIONS. The fact that an application
11 21 for registration has been filed or the fact that a business
11 22 opportunity is effectively registered does not constitute a
11 23 finding by the administrator that a document filed under this
11 24 chapter is true, complete, and not misleading. The fact that
11 25 an application for registration has been filed, that a
11 26 business opportunity is effectively registered, or that an
11 27 exemption or exception is available for a business opportunity
11 28 does not mean that the administrator has passed in any way
11 29 upon the merits or qualifications of, or recommended or given
11 30 approval to, a person or business opportunity. It is unlawful
11 31 to make, or cause to be made, to a purchaser, any
11 32 representation inconsistent with this subsection.
11 33 3. 2. ADVERTISING. It is unlawful for a A seller shall
11 34 not, in connection with the offer or sale of a business
11 35 opportunity in this state, to publish, circulate, or use
12 1 advertising which contains an untrue statement of a material
12 2 fact or omits to state a material fact necessary in order to
12 3 make the statements made, in the light of the circumstances
12 4 under which they are made, not misleading.
12 5 Sec. 27. Section 523B.12, subsection 4, unnumbered
12 6 paragraph 1, Code 2003, is amended to read as follows:
12 7 It is unlawful for a business opportunity A seller to of a
12 8 business opportunity shall not do any of the following:
12 9 Sec. 28. Section 523B.12, subsection 4, paragraphs d, f,
12 10 h, and j, Code 2003, are amended to read as follows:
12 11 d. Misrepresent the training and management assistance
12 12 available to the business opportunity purchaser.
12 13 f. Misrepresent, by failure to disclose or otherwise, the
12 14 termination, transfer, or renewal provision of a business

12 15 opportunity ~~agreement contract.~~
12 16 h. Assign a so-called exclusive territory encompassing the
12 17 same area to more than one ~~business opportunity~~ purchaser.
12 18 j. Provide merchandise, machines, or displays of a brand
12 19 or kind substantially different from or inferior to those
12 20 promised by the ~~business opportunity~~ seller.
12 21 Sec. 29. Section 523B.13, subsections 5 and 6, Code 2003,
12 22 are amended by striking the subsections.
12 23 Sec. 30. DIRECTIONS TO CODE EDITOR. The Code editor is
12 24 directed to renumber Code chapter 523B, transferring the
12 25 chapter from title XIII, subtitle 1, insurance and related
12 26 regulation, to title XIII, subtitle 5, regulation of
12 27 commercial enterprises.
12 28 Sec. 31. Sections 523B.5, 523B.8, and 523B.10, Code 2003,
12 29 are repealed.

12 30 DIVISION III

12 31 CONGREGATE CARE OR SENIOR ADULT CONGREGATE LIVING SERVICES

12 32 Sec. 32. Section 523D.2, Code 2003, is amended to read as
12 33 follows:
12 34 523D.2 ~~FILING WITH DIVISION OF INSURANCE APPLICATION OF~~
12 35 ~~CHAPTER.~~

13 1 ~~A person shall not, as This chapter applies to a provider,~~
13 2 ~~enter into who executes a contract to provide continuing care~~
13 3 ~~or senior adult congregate living services in a facility, or~~
13 4 ~~extend the term of an existing contract to provide continuing~~
13 5 ~~care or senior adult congregate living services in a facility,~~
13 6 ~~if the contract requires or permits the payment of an entrance~~
13 7 ~~fee to any a person, and the any of the following apply:~~

13 8 1. ~~The facility is or will be located in this state, or~~
13 9 ~~the.~~

13 10 2. ~~The provider or a person acting on the provider's~~
13 11 ~~behalf solicits the contract within this state for a facility~~
13 12 ~~located in this state and the person to be provided with~~
13 13 ~~continuing care or senior adult congregate living services~~
13 14 ~~under the contract resides within this state at the time of~~
13 15 ~~the solicitation, unless the person has filed with the~~
13 16 ~~division of insurance of the department of commerce, a current~~
13 17 ~~disclosure statement which meets the requirements of section~~
13 18 ~~523D.3. The disclosure statement shall be accompanied by a~~
13 19 ~~one hundred dollar filing fee as a condition of filing and~~
13 20 ~~compliance with this section.~~

13 21 Sec. 33. NEW SECTION. 523D.2A ANNUAL CERTIFICATION.

13 22 On or before March 1 of each year, a provider shall file a
13 23 certification with the commissioner in a manner and according
13 24 to requirements established by the commissioner. The
13 25 certification shall be accompanied by a one hundred dollar
13 26 administrative fee. The certification shall attest that
13 27 according to the best knowledge and belief of the attesting
13 28 party, the facility administered by the provider is in
13 29 compliance with the provisions of this chapter, including
13 30 rules adopted by the commissioner or orders issued by the
13 31 commissioner as authorized under this chapter. The attesting
13 32 person may be any of the following:

13 33 1. A person serving as the president or chief executive
13 34 officer of a corporation.

13 35 2. A person acting as the general partner of a limited
14 1 partnership.

14 2 3. A person acting as the general partner of a limited
14 3 liability partnership.

14 4 4. A person acting in a fiduciary capacity or as a trustee
14 5 on behalf of a provider.

14 6 5. A person who is a manager of a limited liability
14 7 company.

14 8 Sec. 34. Section 523D.3, subsection 1, Code 2003, is
14 9 amended by adding the following new paragraph:

14 10 NEW PARAGRAPH. n. A description of transactions in which
14 11 the provider obtains real or personal property or construction
14 12 services from any of the following:

14 13 (1) The developer of the facility, or a person who is
14 14 under the control of the developer.

14 15 (2) If the provider is a business entity, any person
14 16 holding an executive position in the business entity,
14 17 including but not limited to a member of a board of directors
14 18 or an officer of a corporation, a manager of a limited
14 19 liability company, a general partner of a limited partnership,
14 20 or a trustee of a trust.

14 21 (3) If the provider is a business entity, any person who
14 22 holds a ten percent or greater equity or beneficial interest
14 23 in the business entity.

14 24 (4) Any person who directly or indirectly by acting
14 25 through one or more intermediaries controls management

14 26 decisions of the facility.

14 27 A transaction shall include each purchase or lease of real
14 28 property or personal property by the provider, and any
14 29 construction services provided to the provider. The
14 30 description shall include transactions which have occurred or
14 31 which are planned to occur. The description shall also
14 32 include whether the terms of the transaction were or will be
14 33 on terms which are at least as favorable to the provider as
14 34 those terms which would be generally available from an
14 35 unaffiliated third party.

15 1 Sec. 35. Section 523D.3, subsections 2 through 4, Code
15 2 2003, are amended to read as follows:

15 3 2. The provider shall ~~file with the insurance division,~~
~~15 4 annually within five months following the end of the~~
~~15 5 provider's fiscal year, prepare~~ an annual disclosure statement
15 6 which shall contain the information required by this chapter
15 7 for the initial disclosure statement. The annual disclosure
15 8 statement shall also be accompanied by a narrative describing:

15 9 a. Any material differences between the pro forma cash
15 10 flow projection ~~filed~~ prepared pursuant to this chapter as
15 11 part of the most recent annual disclosure statement and the
15 12 actual results of operations during the fiscal year, if the
15 13 material differences substantially affect the financial safety
15 14 or soundness of the community.

15 15 b. A revised pro forma cash flow projection for the next
15 16 fiscal year.

15 17 2A. The provider shall prepare the annual disclosure
15 18 statement not later than five months following the end of the
15 19 provider's fiscal year. The provider shall retain a record of
15 20 each annual disclosure statement prepared under this section
15 21 for at least five years.

15 22 3. ~~In the event if~~ an amendment is ~~filed with the division~~
~~15 23 of insurance prepared~~ pursuant to subsection 4, the provider
15 24 shall deliver a copy of the amendment or the amended
15 25 disclosure statement to a prospective resident and to a
15 26 prospective resident's personal representative if one is
15 27 appointed prior to the provider's acceptance of part or all of
15 28 the entrance fee or the execution of the continuing care or
15 29 senior congregate living services contract by the prospective
15 30 resident.

15 31 4. ~~In addition to filing the annual disclosure statement,~~
~~15 32 the~~ The provider may amend its ~~currently filed current annual~~
15 33 disclosure statement at any other time if, in the opinion of
15 34 the provider, an amendment is necessary to prevent the
15 35 disclosure statement and annual disclosure statement from
16 1 containing any material misstatement of fact or omission to
16 2 state a material fact required to be included in the
16 3 statement. The amendment or amended disclosure statement
16 4 shall be ~~filed with the division of insurance before the~~
~~16 5 statement is delivered kept with the records of the provider's~~
16 6 annual disclosure statements. The provider shall deliver a
16 7 copy of the amendment to a resident or prospective resident
16 8 and a personal representative of a resident or prospective
16 9 resident ~~and is subject to all the requirements, including~~
~~16 10 those as to content and delivery, of this chapter in the same~~
16 11 manner as the annual disclosure statement.

16 12 Sec. 36. Section 523D.4, subsection 2, Code 2003, is
16 13 amended to read as follows:

16 14 2. A provider shall not ~~file with the division of~~
~~16 15 insurance or make,~~ publish, disseminate, circulate, or deliver
16 16 to any person or place before the public, or cause, directly
16 17 or indirectly, to be ~~made,~~ published, disseminated,
16 18 circulated, or delivered to any person or placed before the
16 19 public, a financial statement which does not meet generally
16 20 accepted accounting principles.

16 21 Sec. 37. Section 523D.5, subsection 1, unnumbered
16 22 paragraph 1, Code 2003, is amended to read as follows:

16 23 A provider shall not enter into a contract to provide
16 24 continuing care or senior adult congregate living services
16 25 that applies to a living unit that is part of a new facility
16 26 or proposed expansion that is or will be located in this state
16 27 unless the ~~person has submitted an application on a form as~~
~~16 28 required by the division of insurance accompanied by a fee of~~
~~16 29 two hundred fifty dollars. The application at a minimum must~~
16 30 include provider has prepared or acquired all of the following
16 31 information:

16 32 Sec. 38. Section 523D.5, subsection 1, paragraphs d
16 33 through f, Code 2003, are amended to read as follows:

16 34 d. A statement of financial feasibility for the new
16 35 facility or proposed expansion ~~in a form satisfactory to the~~
~~17 1 commissioner,~~ which includes a statement of future funding

17 2 sources and shall identify the qualifications of the person or
17 3 persons preparing the study.

17 4 e. A statement of the market feasibility for the new
17 5 facility or proposed expansion ~~in a form satisfactory to the~~
~~17 6 commissioner~~, which identifies the qualifications of the
17 7 person or persons preparing the study.

17 8 f. If the new facility or proposed expansion offers a
17 9 promise to provide nursing or health care services to
17 10 residents in the future pursuant to contracts effective for
17 11 the life of the resident or a period in excess of one year in
17 12 consideration for an entrance fee, an actuarial forecast ~~in a~~
~~17 13 form satisfactory to the commissioner~~, which identifies the
17 14 qualifications of the actuary or actuaries preparing the
17 15 forecast.

17 16 Sec. 39. Section 523D.5, subsection 2, paragraphs a and b,
17 17 Code 2003, are amended to read as follows:

17 18 a. ~~Existing facilities. If a filing is made under this~~
~~17 19 section for~~ For an expansion of an existing facility, the
17 20 determination of feasibility shall be based on consolidated
17 21 information for the existing facility and the proposed
17 22 expansion.

17 23 b. ~~New facilities. If a filing is made under this section~~
~~17 24 for~~ For a new facility, not part of an existing facility that
17 25 will be constructed in more than one stage or phase, the
17 26 initial stage or phase must evidence feasibility independent
17 27 of any subsequent stage or phase and contain all of the
17 28 facilities or components necessary to provide residents with
17 29 all of the services and amenities promised by the provider.

17 30 Sec. 40. Section 523D.5, subsection 3, unnumbered
17 31 paragraph 1, Code 2003, is amended to read as follows:

17 32 New construction shall not begin until ~~the filing required~~
~~17 33 by this section has been made and~~ at least fifty percent of
17 34 the proposed number of independent living units in the initial
17 35 stage or phase have been reserved pursuant to executed
18 1 contracts and at least ten percent of the entrance fees
18 2 required by those contracts are held in escrow pursuant to
18 3 this chapter. However, the requirements of this subsection
18 4 may be waived by the commissioner by rule or order upon a
18 5 showing of good cause.

18 6 Sec. 41. Section 523D.5, subsection 3, paragraph a, Code
18 7 2003, is amended to read as follows:

18 8 a. Secured financing adequate in an amount and term to
18 9 complete the project ~~described in the filing required by this~~
~~18 10 section.~~

18 11 Sec. 42. Section 523D.5, subsection 4, Code 2003, is
18 12 amended to read as follows:

18 13 4. ESCROW REQUIREMENTS. Unless ~~proof has been submitted~~
~~18 14 to the commissioner that~~ conditions for the release of
18 15 escrowed funds set forth in this section have already been
18 16 met, the provider shall establish an interest-bearing escrow
18 17 account at a state or federally regulated financial
18 18 institution located within this state to receive any deposits
18 19 or entrance fees or portions of deposits or fees for a living
18 20 unit which has not been previously occupied by a resident for
18 21 which an entry fee arrangement is used. The escrow account
18 22 agreement shall be entered into between the financial
18 23 institution and the provider with the financial institution as
18 24 the escrow agent and as a fiduciary for the resident or
18 25 prospective resident. The agreement shall state that the
18 26 purpose of the escrow account is to protect the resident or
18 27 prospective resident and that the funds deposited shall be
18 28 kept and maintained in an account separate and apart from the
18 29 provider's business accounts.

18 30 Sec. 43. Section 523D.5, subsection 5, paragraph c,
18 31 unnumbered paragraph 1, Code 2003, is amended to read as
18 32 follows:

18 33 Except as provided by paragraphs "a" and "b", amounts held
18 34 in escrow shall ~~not~~ be released ~~only upon approval of the~~
~~18 35 commissioner. The commissioner shall approve the release of~~
~~19 1 funds only upon a determination that unless~~ at least one of
19 2 the following conditions has been satisfied:

19 3 Sec. 44. Section 523D.5, Code 2003, is amended by adding
19 4 the following new subsection:

19 5 NEW SUBSECTION. 6. RETENTION OF RECORDS. The provider
19 6 shall maintain information required by this section for at
19 7 least five years. The information shall be made available for
19 8 inspection during normal business hours.

19 9 Sec. 45. Section 523D.8, subsection 1, Code 2003, is
19 10 amended to read as follows:

19 11 1. A person who ~~willfully and knowingly~~ violates a
19 12 provision of this chapter or a rule adopted or order entered

19 13 pursuant to this chapter, ~~upon conviction, is guilty of an~~
19 14 ~~aggravated misdemeanor commits a fraudulent practice as~~
19 15 ~~provided in chapter 714.~~

19 16 Sec. 46. Section 523D.10, Code 2003, is amended to read as
19 17 follows:

19 18 523D.10 RULES.

19 19 The division of insurance may adopt rules pursuant to
19 20 chapter 17A as necessary and appropriate to implement this
19 21 chapter, and may make further recommendations to the general
19 22 assembly for the protection of residents and prospective
19 23 residents of facilities ~~required to file an annual disclosure~~
19 24 ~~statement under this chapter.~~

19 25 Sec. 47. Section 523D.12, subsection 1, Code 2003, is
19 26 amended by striking the subsection.

19 27 Sec. 48. Section 523D.12, subsection 2, unnumbered
19 28 paragraph 1, Code 2003, is amended to read as follows:

19 29 The commissioner ~~or the attorney general~~ may, for the
19 30 purpose of discovering or investigating violations of this
19 31 chapter or rules adopted pursuant to this chapter do any or
19 32 all of the following:

19 33 Sec. 49. Section 523D.12, subsection 2, paragraph c, Code
19 34 2003, is amended to read as follows:

19 35 c. Apply to the district court for issuance of an order
20 1 requiring a person's appearance before the commissioner ~~or~~
20 2 ~~attorney general~~. The person may also be required to produce
20 3 documentary evidence germane to the subject of the
20 4 investigation. Failure to obey a court order under this
20 5 subsection constitutes contempt of court.

20 6 Sec. 50. Section 523D.14, Code 2003, is amended to read as
20 7 follows:

20 8 523D.14 INJUNCTIONS.

20 9 The ~~attorney general~~ commissioner may petition the district
20 10 court in any county of the state for an injunction to restrain
20 11 a person subject to this chapter and any agents, employees, or
20 12 associates of the person from engaging in conduct or practices
20 13 in violation of this chapter or rules adopted pursuant to this
20 14 chapter. In a proceeding for an injunction, the ~~attorney~~
20 15 ~~general commissioner~~ may apply to the court for the issuance
20 16 of a subpoena to require the appearance of a defendant and the
20 17 defendant's agents and any documents, books, or records
20 18 germane to the hearing upon the petition for an injunction.
20 19 Upon proof of any of the violations described in the petition
20 20 for injunction, the court may grant the injunction.

20 21 Sec. 51. Section 523D.9, Code 2003, is repealed.

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20 25 _____
20 26 CHRISTOPHER C. RANTS
20 27 Speaker of the House

20 28
20 29 _____
20 30 JEFFREY M. LAMBERTI
20 31 President of the Senate
20 32

20 33 I hereby certify that this bill originated in the House and
20 34 is known as House File 2269, Eightieth General Assembly.

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21 2
21 3 _____
21 4 MARGARET THOMSON
21 5 Chief Clerk of the House

21 6 Approved _____, 2004

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21 8

21 9 _____
21 10 THOMAS J. VILSACK
Governor